IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.832 OF 2006

Bhagchand Masicharan Dhilor ..Petitioner

Vs.

The State of Maharashtra ..Respondent

None for the petitioner

Mr.D.S.Mhaispurkar, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 29TH SEPTEMBER, 2006

ORAL JUDGEMENT (PER J.N.PATEL, J):

1. Rule, returnable forthwith.

2. Ld.A.P.P. waives service.

3. This petition has been filed by the convict Bhagchand Masicharan Dhilor through Jail challenging the order passed by the Superintendent of Nasik Road Central Prison for deducting his remission and denying him remission by ordering his removal from the Register of remission permanently.

4. It is a case of the petitioner that he has been convicted in Sessions Case No.87 of 1986 by the Additional Sessions Judge, Jalgaon for having committed offence under section 302 of the Indian Penal Code. By judgment and order dt.4.3.1987, the Trial Court sentenced the petitioner to suffer imprisonment for life. While the petitioner was undergoing imprisonment, he applied for furlough which was sanctioned by the respondent competent authority and communicated to the Superintendent of Nasik Road Central Prison vide letter dt.24.5.1996. Accordingly, the petitioner came to be released on furlough leave for two weeks on 27.5.1996. The petitioner on the expiry of furlough leave was expected to return to the prison on 11.6.1996 but he failed the return to the prison on the due date and over stayed for a total period of 2531 days. Then the petitioner was taken in custody of Chavani Police Station, Malegaon, District Nashik and produced in Jail on 19.5.2003.

5. After the petitioner was arrested and lodged in prison, a show cause notice to the petitioner came to be issued on 20.5.03 under the

prison rule 1979 Chapter 27 Rule 26 2(a). Though the petitioner was served with show cause notice, he did not submit any explanation to the show cause notice and, therefore, the Superintendent, Nashik Road Central Prison submitted a proposal to the court of Sessions on 1.7.2003 proposing a total cut of his earned remission of 1297 days and striking down his name from the remission register permanently. The said proposal was approved by the Joint District and Sessions Judge, Nasik.

6. It is a case of the petitioner that the Superintendent of Nasik Road Central Prison could not have imposed the proposed punishment merely by seeking approval of the Joint District and Sessions Judge, Nasik and the punishment has been imposed without taking prior approval of the Deputy Inspector General of Prisons, Central Region, Aurangabad. The punishment of deduction of remission and striking down his name from the Registrar permanently thus, has to be quashed and set aside.

7. On being served with the notice,

Superintendent, Nasik Road Central Prison submitted a proposal for approval to the office of Deputy Inspector General of Prisons, Central Region, Aurangabad vide letter no.JC/Furlough/11360/2006 dt.20.8.06 and on submission of such a proposal, Deputy Inspector General of Prisons granted his approval on 21.8.06 and made it clear that the punishment shall come in force and after the receipt of the said order by the prisoner.

8. It is submitted on behalf of the prisoner that no post-sanction/approval can be granted by the Deputy Inspector General of Prisons and, therefore, in view of the decision of this court in the case of Shaikh Mohobulla s/o Noor Mohammad vs. State of Maharashtra and another, the impugned order deserves to be quashed and set aside.

9. This court while examining the petition specifically directed the Deputy Inspector General of Prisons, Central Region, Aurangabad to file his affidavit in reply to those specific plea taken by the respondents. In reference to the decision of this court in Shaikh Mohobulla s/o Noor Mohammad

vs. State of Maharashtra and another, the Deputy Inspector General of Prisons in response to the said direction filed his affidavit and has specifically stated in his affidavit dt.7.9.06 that there was a lapse on the part of the Superintendent, Nasik Road Central Prison for causing delay in submission of proposal to the Deputy Inspector General of Prisons, Central Region, Aurangabad that he has called for explanation of the concerned officers and staff of the said prison and proposed to take suitable action against them. With this explanation, we are satisfied that the Jail Authorities particularly the Superintendent Nasik Road, Central Prison, Aurangabad failed to get prior approval of the Deputy Inspector General of Prisons and the matter was closed at his end after getting the approval of the Joint District and Sessions Judge, Nasik which is not the requirement for imposing the impugned punishment.

10. In view of the fact that the Deputy Inspector General of Prisons has taken cognisance of this lapse on the part of the Superintendent, Nasik Road

Central Prison, we are not inclined to interfere with the punishment imposed on the prisoner for the very reason that the fact of overstaying his furlough leave is not disputed and the D.I.G.of Prisons has specifically ordered that the punishment imposed on the petitioner prisoner would take effect from the date D.I.G. of Prisons has granted his approval. We expect the D.I.G.of Prisons would take necessary disciplinary action against the defaulting officials of the prison so that such lapse on the part of the jail officials are not repeated in future. With these observations, petition is dismissed. Rule discharged.

(SHRI J.N. PATEL, J)

(SMT.ROSHAN DALVI, J)